



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, MNDC, RPP, FF

Introduction

This hearing dealt with an application from the tenant for a monetary order in the amount of double her security deposit, an order instructing the landlords to return her personal possessions or, in the alternative, a monetary order as compensation for the full value of personal possessions held by the landlords, in addition to recovery of the filing fee for this application. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

In the early stages of the hearing the landlord requested an adjournment, stating that for reasons related to language, he would prefer to have an in-person hearing and also have someone accompany him to provide assistance in presenting his case. The tenant was averse to this request.

A hearing is a formal, legal process and the landlords had ample notice of the scheduled date; further, well in advance of the hearing the landlords were informed of the case before them. In spite of this the landlords did not request an adjournment or an in-person hearing prior to the scheduled date of the hearing. Neither did the landlords arrange for any person to be present during the conference call in order to assist with their presentation. By way of his having managed access to the conference call and as exhibited by his capable participation early in the conference call, the landlord demonstrated his competence to adequately represent himself in the hearing. Finally, I consider that a further delay in the proceedings would be a denial of natural justice to the tenant. For all of the above reasons the landlord's request for adjournment was denied.

Issues to be Decided

- Whether the tenant is entitled to any or all of the above

Background and Evidence

There is no evidence of a standard written residential tenancy agreement in place for this tenancy. Evidence in this regard is limited to a note in the tenant's hand writing dated November 8, 2008 which states:

My name is [tenant] of legal age. agreed to rent 4 bedroom house for \$1,650/mon. I gave \$800.00 for the damage deposit. [reproduced as written]

The tenant's position is that the month-to-month tenancy commenced on December 1, 2008, and that on November 10, 2008 she paid a security deposit in the amount of \$800.00. At the landlords' request the tenant paid rent for December 2008 and January 2009 in cash.

By way of a hand written letter dated February 5, 2009, the landlord gave notice to the tenant to vacate the unit. The landlord's letter states, in part:

I am [landlord] the owner of the house [address] request for the renter who has moved into this house. I am going to move back into this house. I am giving you this notice one month before moving. [reproduced as written]

Following her receipt of this notice, the tenant claims to have put a stop payment on the cheque issued in payment for February's rent. Subsequently the tenant vacated the unit on February 28, 2009. The tenant alleges that at the end of tenancy the landlords refused to provide her with access to a garage on the property so she could remove her personal possessions; these included a new single bed and bookshelf which she stored there with the consent of the landlords. The tenant submitted documentation to support the assessed value (including all taxes) of the bed at \$425.60 and the bookcase at \$161.28 (total: \$586.88).

The landlord denies that these possessions are being held by him and he insists that the tenant owes full rent for the month of February 2009. The landlords submitted no documentary evidence.

Following the end of tenancy, by letter dated March 2, 2009, the tenant's legal counsel informed the landlords of the tenant's forwarding address and requested return of the full security deposit. There was no response to this request by the landlords.

Analysis

The full text of the relevant legislation, in addition to Fact Sheets, forms and other information pertinent to the landlord – tenant relationship, can be accessed via the website: www.rto.gov.bc.ca/

In addition to considering the relevant legislation, in order to decide the issues I have carefully weighed the documentary evidence and testimony of the parties. A test for assessing credibility is set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, must reasonably be subjected to an examination of the consistency of their stories with the probabilities that surround the currently existing conditions. In short, the real test of the truth of a story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and under those conditions.

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**. In particular, section 49(2) & (3) of the Act state as follows:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When the landlord ends a tenancy pursuant to section 49 of the Act, as above, the landlord must compensate the tenant pursuant to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**. In particular, section 51(1) & (1.1) provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

Notwithstanding that the landlord contravened the Act by providing not even one full month's notice to vacate the unit for landlord's use of property, the tenant vacated the unit at the close of February 2009. In view of the reason for the landlord's notice, pursuant to section 51(1.1) of the Act, as above, I find that the tenant is entitled to withhold payment of rent for the month of February 2009.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In particular, section 38(1) of the Act states:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In the circumstances of this dispute, I find that the tenant paid a security deposit to the landlords on November 10, 2008 in the amount of \$800.00. I also find that the landlord neither returned the tenant's security deposit within 15 days of having been informed in writing of her forwarding address, nor made an application for dispute resolution claiming against the security deposit. Accordingly, pursuant to section 38(6)(b) of the

Act, as above, I find that the tenant is entitled to double return of her security deposit in the amount of \$1,600.00 (2 x \$800.00) plus interest on the original amount which is \$1.70 (total: \$1,601.70).

As to the disposition of the tenant's personal possessions, on a balance of probabilities I prefer the evidence of the tenant. Specifically, I find that the tenant stored a bed and a bookcase in the landlords' garage. As the landlord denies this and as there is no practical means for efficiently determining whether these items remain in the landlords' garage, I find that the tenant is entitled to compensation in the amount of the replacement costs as set out above in the total amount of \$586.88.

Pursuant to all of the above information, I find that the tenant has established a claim of \$2,238.58. This is comprised of the items set out above, in addition to the \$50.00 filing fee for this application. In summary:

\$1,601.70	double return of the security deposit, including interest
\$ 586.88	replacement costs of personal possessions, including taxes
\$ 50.00	filing fee

Accordingly, I grant the tenant a monetary order under section 67 of the Act for \$2,238.58.

Conclusion

I hereby grant the tenant a monetary order under section 67 of the Act for **\$2,238.58**.

This order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 7, 2009

Dispute Resolution Officer